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EXAMINER

LUBY, MATTHEW D

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/078,322

Applicant(s)

MOSS ET AL.

Examiner

Matt Luby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 9, 10. 6) ☐ Other: _____

DETAILED ACTION

Preliminary Amendment

1. The preliminary amendment filed 07/25/02 has been entered and is considered in this Office Action.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: the declaration contains a reference to an earlier filed pending application and lists the application as Serial No. 10/078,322 filed February 12, 2002. That is the exact filing date of the instant application and it's exact Serial No. Therefore, no priority would exist since the data are the same for the "claimed" priority application under 35 U.S.C. 120 and the instant application being examined. However, it is noted that no reference has been made in the declaration to the priority data for the provisional application from which Applicants claim priority (e.g., U.S. Provisional Application Serial No. 60/268,746 filed 02/14/01).

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "24" has been used to designate both a "retainer" and a "groove" (page 9, lines 10 and 11), reference character "74" has been used to designate both a "bumper" and an "aperture" (page 12, lines 3 and 6) and reference character "70" has been used to designate a "reinforced opening" (on page 12, line 1) and a "collar" (page 13, line 2). A proposed drawing correction or corrected drawings are required in

reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 17a & 17b (page 7, lines 9-10) and 26 (page 8, line 17). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. The abstract of the disclosure is objected to because the word "form" is misspelled in line 3 and should be changed to "from". Correction is required. See MPEP § 608.01(b).

6. The disclosure is objected to because of the following informalities:

On page 3, line 11 the word "form" is misspelled and should be changed to "from".

On page 4, line 6 the word "may" is misspelled and should be changed to "many".

On page 6, line 16 it is believed that the phrase "Figures 1 through 39" should be changed to "Figures 1 through 16" since there are only 16 figures.

On page 7, line 7 there should be a space inserted between "pedestal" and "14b" at the end of the sentence.

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On page 18, line 6 the word "may" is misspelled and should be changed to "many".

On page 18, line 19 the word "secure" is in the incorrect tense and should be changed to "secured".

Appropriate correction is required.

Claim Objections

7. Claims 1 and 19 are objected to because of the following informalities:

In claim 1, line 14 the word "form" is misspelled and should be changed to "from".

Appropriate correction is required.

In claim 19, line 1 the word "selective" is misspelled and should be changed to "selectively".

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5, 10, 11 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by May (U.S. Patent 5,890,727).

10. May discloses a hitch having longitudinal, lateral, and transverse axes (Figure 1) substantially mutually orthogonal to one another for connecting a towed vehicle to a

receiver on a towing vehicle comprising: a first ball (34) and pedestal, extending together in a first direction (Figure 3); a second ball (36) and pedestal, extending together in a second direction distinct from the first direction (Figure 4); the first ball and pedestal and the second ball and pedestal comprising a substantially homogeneous monolith (col. 3, lines 39-41), and a stem (16), extending away from the first ball and second ball in a third direction, distinct from both the first and second directions, to support, selectively, the first ball and pedestal and the second ball and pedestal in a respective deployed position thereof (Figure 1), wherein the first direction and the second direction are substantially collinear and extending substantially opposite one another (Figure 3), wherein the first direction and the second directions are substantially aligned with the transverse axis (Figure 3), wherein the third direction is substantially aligned with the longitudinal axis (Figure 3), wherein the stem is rotatably connected to the first and second balls (Figure 1), wherein the stem is connected to the monolith by an interface selected from the group consisting of threading, welding, bolting, swaging, riveting and pinning (the stem is connected to the monolith by bolting - Figure 1), wherein the first ball has diameter different from the diameter of the second ball (col. 3, lines 44-46), further comprising a lock (nut shown for attachment to 16 in Figure 1) securing the stem to the monolith (Figures 1 and 2).

11. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by May.

12. May discloses a hitch having longitudinal, lateral, and transverse axes (Figure 1) substantially mutually orthogonal to one another, the hitch comprising: an intermediate region (40) oriented to extend in the transverse direction (Figures 1, 3 and 4 show that

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the intermediate region may be rotated to extend in the transverse direction and is therefore oriented to do such); a first ball hitch (34) extending from the intermediate region in a first direction substantially along the transverse direction (Figure 3); the first ball having a solid cross section across a diameter thereof (Figures 1, 3 and 4); a second ball (36) extending from the intermediate region in a second direction distinct from the first direction (Figure 3); and the first ball, second ball and intermediate region formed of a single, contiguous, substantially homogenous material (col. 3, lines 39-41).

13. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by McWerthy (U.S. Patent 5,725,229).

14. McWerthy discloses an apparatus having longitudinal, lateral, and transverse axes (Figure 2) substantially mutually orthogonal to one another for mounting a hitch to a vehicle, the apparatus comprising: a trunnion (150) extending in the longitudinal direction; a base (118) having a forward end and a rearward end, secured proximate the forward end to the trunnion (Figure 5 shows the same structure of the trunnion and base as that of Figure 2 of Applicants' drawings); a mount (120) secured to the base to receive a hitch (56 - Figure 5); a fastener (132) engaging the mount to selectively position the mount with respect to the base in a towing position and in a stowed position substantially half a revolution therefrom, the stow position rendering the mount inaccessible for towing (if for example, hitch ball 56c, as shown in Figure 5, is positioned pointing vertically upwardly, and the entire unit is rotated half a rotation to the left, the apparatus would not be accessible for towing).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over May.

17. May discloses that the stem is substantially cylindrical in shape (Figure 1), a mount (20) connected to rotatably support the stem (Figures 1 and 2) and a locking mechanism (nut shown for attachment to 16 in Figure 1) securing the stem to the mount at a plurality of rotational positions with respect thereto (the various rotational positions for the hitch 10). May does not disclose that the stem is formed homogeneously with the monolith as a single piece of the single material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the stem as an integral piece with the monolith, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art and in order to provide less working pieces for the hitch thereby possibly lowering shipping costs and/or the possibility of loss of parts to the consumer. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

18. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over May in view of Belcher (U.S. Patent 4,807,899).

19. May discloses all of Applicants' claimed invention except that the stem is secured in fixed relation with respect to the pedestal such that the stem and the pedestal rotate

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together in rigid body motion, that the stem comprises a trunnion and the hitch further comprises a receiver shaped to selectively receive the trunnion and that the stem has a first portion, cooperatively shaped to engage a corresponding portion of the first and second balls, and a second portion, shaped distinctively from the first portion, to fit the receiver. Belcher discloses a stem (24) secured in fixed relation with respect to the pedestal such that the stem and the pedestal rotate together in rigid body motion, that the stem comprises a trunnion (28, 30, 34, 36) and the hitch further comprises a receiver (50) shaped to selectively receive the trunnion and that the stem has a first portion (the end near the balls 24 and 26), cooperatively shaped to engage a corresponding portion of the first and second balls, and a second portion, shaped distinctively from the first portion, to fit the receiver (the end near opening 36) in order to provide an improved aligning trailer hitch that has much greater range of operation (column 1, lines 36-55). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that the stem is secured in fixed relation with respect to the pedestal such that the stem and the pedestal rotate together in rigid body motion, that the stem comprises a trunnion and the hitch further comprises a receiver shaped to selectively receive the trunnion and that the stem has a first portion, cooperatively shaped to engage a corresponding portion of the first and second balls, and a second portion, shaped distinctively from the first portion, to fit the receiver on the May invention, as taught by Belcher, in order to provide an improved aligning trailer hitch that has much greater range of operation.

20. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McWerthy in view of May.

21. McWerthy discloses an apparatus for mounting a hitch to a vehicle, the apparatus comprising: a base (118) having a supporting portion (150) to connect to a vehicle; a mount (120) having a proximal end and a distal end, the proximal end pivotably (through 142 and 144) secured to the base to support pitching of the mount with respect to the base between a stowed position and a deployed position suitable for towing; a first ball hitch (56a) extending in a first direction; a second ball hitch (56c) extending in a second direction, distinct from the first direction; a stem (20) rigidly extending in a third direction, distinct from both the first and second directions, away from the first and second ball hitches to selectively support the first ball hitch and the second ball hitch in the respective deployed positions thereof; and the stem, pivotably securing to the distal end of the mount to provide a rolling motion of the first and second ball hitches with respect to the mount (through 132), further comprising a first lock (146, 148) to selectively maintain the mount in the stowed position and the deployed position and a second lock (133) to selectively maintain the first and second ball hitches at multiple degrees of rotation with respect to the mount. McWerthy does not disclose that the first and second ball hitches are formed together as a homogenous monolith of a single material. May discloses first and second ball hitches are formed together as a homogenous monolith of a single material (col. 3, lines 39-41) in order to provide an integrally formed multi-ball hitch from readily available stock material (i.e., die-cast stainless steel - column 3, lines 35-41). It would have been obvious to one of ordinary

skill in the art at the time of the invention to provide first and second ball hitches formed together as a homogenous monolith of a single material on the McWerthy apparatus, as taught by May, in order to provide an integrally formed multi-ball hitch from readily available stock material.

22. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milton (4,232,877) in view of May.

23. Milton discloses an apparatus for towing, having longitudinal, lateral, and transverse axes (Figure 1) substantially mutually orthogonal to one another, the apparatus comprising: a first ball hitch (12) having a first ball (Figure 1), substantially spherical and solid across a diameter thereof, and a first neck (16), contiguous therewith and non-spherical to extend away therefrom (Figure 1); the first ball hitch formed of a first material and having an axis of substantial symmetry oriented along the transverse direction (Figure 1); an intermediate region (60) having a first end (62) and a second end (64), the first end contiguous with the first neck and positioned opposite the first ball; a second ball hitch (32) proximate the second end and extending away from the intermediate region (Figure 1), wherein the second ball hitch has a second ball (32), substantially spherical and solid across a diameter thereof (Figure 1), and a second neck (36), contiguous therewith and non-spherical to extend away therefrom (Figure 3), wherein the first and second ball hitches and the intermediate region are collinear with one another (Figures 1-3); wherein the intermediate region is substantially cylindrical (Figures 1-3). Milton does not disclose that the first ball hitch, the intermediate region, and the second ball hitch comprise a single, monolithic, substantially homogenous

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material. May discloses a first ball hitch, intermediate region, and second ball hitch comprising a single, monolithic, substantially homogenous material (col. 3, lines 39-41) in order to provide an integrally formed multi-ball hitch from readily available stock material (i.e., die-cast stainless steel - column 3, lines 35-41). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide that first ball hitch, the intermediate region, and the second ball hitch of the Milton apparatus comprise a single, monolithic, substantially homogenous material, as taught by May, in order to provide an integrally formed multi-ball hitch from readily available stock material.

24. Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milton in view of May as applied to claim 21 above, and further in view of McWerthy.

25. The Milton in view of May apparatus disclose all of Applicants' claimed invention except for a mount supporting the intermediate region, a fastener for selectively positioning the hitch portion (the first and second ball hitches and the intermediate portion), wherein the mount is selectively positionable to present and deny access to the hitch portion, wherein the mount is further secured to a base, and wherein the mount extends longitudinally away from the base in a first mount position to present access to the hitch portion, wherein the mount is selectively positionable in a second mount position to extend substantially opposite the first mount position to deny access to the hitch portion for towing. McWerthy disclose that it is well known to have a mount (120) supporting the intermediate region, a fastener (138, 140, 142, 144, 146, 148) for selectively positioning the hitch portion, wherein the mount is selectively positionable to

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present and deny access to the hitch portion (by vertical adjustment of the mount), wherein the mount is further secured to a base (118), and wherein the mount extends longitudinally away from the base in a first mount position to present access to the hitch portion, wherein the mount is selectively positionable in a second mount position to extend substantially opposite the first mount position to deny access to the hitch portion for towing (by vertical positioning of the mount access to the hitch portion, access for towing can be denied since the hitch portion will be either too low or too high for the trailing vehicle to be connected) in order to properly position the coupler on the trailer vehicle and to provide optimum vertical alignment (col. 10, lines 58-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a mount supporting the intermediate region, a fastener for selectively positioning the hitch portion, wherein the mount is selectively positionable to present and deny access to the hitch portion, wherein the mount is further secured to a base, and wherein the mount extends longitudinally away from the base in a first mount position to present access to the hitch portion, wherein the mount is selectively positionable in a second mount position to extend substantially opposite the first mount position to deny access to the hitch portion for towing on the modified Milton apparatus, as taught by McWerthy, in order to in order to properly position the coupler on the trailer vehicle and to provide optimum vertical alignment.

26. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over McWerthy in view of May.

27. McWerthy discloses an apparatus having longitudinal, lateral, and transverse axes (Figure 1) substantially mutually orthogonal to one another for connecting a towed vehicle to a towing vehicle, the apparatus comprising: a mount (20) supporting a hitch (10); the hitch further comprising a first ball (56a) extending along the transverse direction (Figure 3); a second ball (56c) extending in a direction opposite that of the first ball; a fastener (38, 40, 42, 44, 46, 48) selectively positionable to selectively present the first and second balls for towing (Figure 2); and the first ball being solid across a diameter thereof (Figures 1, 3 and 4), wherein the fastener is a pin (38) extending in a lateral direction (Figure 2) for positioning the hitch to tow loads in the longitudinal direction. McWerthy does not disclose that the first ball and second ball are formed as a monolith of a single, homogenous material. May discloses that it is well known to form a first ball and second ball as a monolith of a single, homogenous material (col. 3, lines 39-41) in order to provide an integrally formed multi-ball hitch from readily available stock material (i.e., die-cast stainless steel - column 3, lines 35-41). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a first ball and second ball are formed as a monolith of a single, homogenous material on the McWerthy apparatus, as taught by May, in order to provide an integrally formed multi-ball hitch from readily available stock material.

Conclusion

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure because it relates to hitches generally.

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29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Luby whose telephone number is (703) 305-0441.

The examiner can normally be reached on Monday-Friday, 9:30 a.m. to 6:00 p.m..

30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

31. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Matt Luby
Examiner
Art Unit 3611



M.L.
June 26, 2003